

EXHIBIT 5

REDACTED

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION
STATE OF TEXAS, et al,)
)
Plaintiffs,) CASE NO.
) 4:20cv00957-SDJ
v.)
)
GOOGLE, LLC,)
)
Defendant.)
-----)

-- -- --
Friday, May 17, 2024

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HIGHLY CONFIDENTIAL
PURSUANT TO PROTECTIVE ORDER

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Remote Video-Recorded Oral
Fed. R. Civ. P. 30(b)(6) Deposition of GOOGLE
CHAT, BY AND THROUGH [REDACTED] held at the
offices of Veritext, 1000 SW Broadway, Suite
1660, Portland, Oregon, commencing at
9:12 a.m. PDT on the above date, before Debra
A. Dibble, Fellow of the Academy of
Professional Reporters, Certified Court
Reporter, Registered Diplomate Reporter,
Certified Realtime Reporter and Notary
Public.

-- -- --
Job No. MDLG6695561
GOLKOW - VERITEXT
877.370.DEPS | fax 917.591.5672
deps@golkow.com

1 Q. And we'll discuss this later in
2 some more depth, but under your regular
3 rules, you mean, for example, 24 hours,
4 right?

5 A. Correct. History off, correct.

6 Q. History off.

7 So you mentioned, in response
8 to how these chats were preserved in your
9 response to this CID, a litigation hold.

10 So to whom did Google send
11 litigation holds, or at least chats, related
12 to the Civil Investigative Demand we've just
13 discussed, or this lawsuit generally?

14 MR. MCCALLUM: Objection,
15 scope.

16 A. Yeah, I don't know. I don't
17 have any knowledge of that.

18 BY MR. COLLIER:

19 Q. So it's fair to say -- if you
20 don't have any knowledge of which individuals
21 got litigation holds, you don't have any
22 knowledge of which individuals' chats would
23 have been deleted in the normal
24 24-or-whatever-hour retention, right?

25 MR. MCCALLUM: Objection,

1 scope.

2 A. Help me understand that
3 question a bit better. The chat retention
4 policy is operating continuously.

5 BY MR. COLLIER:

6 Q. Mm-hmm. So what is the
7 longest, absent a litigation hold, that the
8 chat retention policy will hold a chat?

9 A. For 18 months.

10 Q. And after 18 months, it's
11 deleted?

12 A. Correct.

13 Q. And in some cases the chat
14 retention policy is far shorter than 18
15 months, right?

16 A. Correct.

17 Q. 24 hours?

18 A. 24 hours, correct.

19 Q. And what's the other option?

20 A. 30 days.

21 Q. 30 days under what scenario?

22 A. In a history on, one-on-one or
23 group chat.

24 Q. So with history off, it's
25 24 hours, is it not?

1 A. Correct.

2 Q. Okay. So if you don't know who
3 got litigation holds to change the 24-hour
4 chat retention, is it fair to say you can't
5 tell me whose chats were retained?

6 MR. MCCALLUM: Objection,
7 scope.

8 A. Explain -- can you rephrase
9 your question?

10 BY MR. COLLIER:

11 Q. Sure.

12 So let's take Mr. Mohan, just
13 as an example, since you know him. Or know
14 of him.

15 A. I don't know him personally.

16 Q. Okay. But you know of him?

17 A. Correct.

18 Q. So we can use him as a name.

19 A. Sure.

20 Q. So if Mr. Mohan sent a chat in
21 2018 or participated in a chat with location
22 history off --

23 A. It's not location history.

24 Q. Excuse me. History off.

25 A. Chat history off, correct.

1 Q. That would be deleted within
2 24 hours, unless he was under a litigation
3 hold.

4 A. We should --

5 MR. MCCALLUM: Objection to
6 scope and form.

7 A. We should also clarify the
8 retention behavior of history-off messages,
9 and this is not just for Google; this is for
10 all Workspace customers who use Google Chat.
11 They are -- those history-off messages are
12 never available to Vault.

13 So they will -- they will
14 disappear from the user's view after
15 24 hours, but they are never available for
16 retention purposes.

17 BY MR. COLLIER:

18 Q. Are you saying that if history
19 is off on chat -- so let's take Mr. Mohan's
20 chats -- those are never available to Vault
21 even in the 24-hour retention period?

22 A. Correct. And this is the way
23 it works for all Workspace customers. This
24 is how the product was designed.

25 Q. By the way, Vault is a Google

1 product, right?

2 A. That's right.

3 Q. And Google Chat is a Google
4 product, right?

5 A. That's right.

6 Q. So they could be designed any
7 way Google wants them designed, right?

8 A. I have -- wasn't involved in
9 those products or engineering conversations.

10 Q. So for a chat to be retained at
11 all by Google, in Google's Vault, it requires
12 location history to be on?

13 A. Not location history.

14 MR. MCCALLUM: Objection to
15 form.

16 BY MR. COLLIER:

17 Q. Sorry, history.

18 A. Correct, it has to be sent in a
19 history-on state.

20 Q. And therefore -- and if history
21 is on, the state of history is on, then it
22 will be retained with the user for 24 --
23 24 hours, 30 days, or up to 18 months,
24 depending on the certain circumstances?

25 A. The shortest history-on

1 retention is 30 days, and then it goes up to
2 18 months for certain types of conversations.

3 Q. So -- we'll go over some
4 examples today. When you have a group chat,
5 say you and Mr. Mohan, just to have an
6 example.

7 And both of your location
8 history -- your histories are off. Not
9 location history. Sorry. Both of your
10 histories are off.

11 A. Just to be clear, there's one
12 history for a conversation. So it's not each
13 individual. It's a conversation history.

14 Q. That -- thank you, because
15 you've anticipated what I was trying to ask,
16 which is, there's only one switch, on or off,
17 right?

18 A. For each conversation, correct.

19 Q. For each conversation.

20 And if you and Mr. Mohan have a
21 back-and-forth, you know, five messages each
22 direction, with history off, right?

23 A. Yeah.

24 Q. Are you with me?

25 A. Mm-hmm.

1 Q. And then you turn on history.

2 Are you with me so far? On message No. 11 in
3 total.

4 A. Yep.

5 Q. It is fair to say that Vault
6 can only capture messages 11 onwards, right?

7 A. Correct.

8 Q. Everything prior to that being
9 turned on is gone, even though it's part of
10 the same group chat.

11 A. That's how the product works,
12 correct.

13 Q. Okay. So we've discussed you
14 don't know who received litigation hold
15 notices in this case, so would it be fair to
16 say you don't know whether or not --

17 Well, let me back up. I want
18 to ask another question about Vault.

19 And is that the way Vault has
20 always operated that, you know, in our
21 scenario, where you and Mr. Mohan send five
22 messages each, and then on message 11, one of
23 you goes, hey, let's turn on history, that
24 Vault never got the first 10 messages from
25 Google Chat?

1 A. That's right.

2 Q. But has it always operated that
3 way?

4 A. Yes. For all Workspace
5 customers, not just for Google. That's the
6 default product behavior for everyone.

7 Q. You say "default product
8 behavior." Can that be altered?

9 A. No. That's -- sorry. Default
10 should not have been in that answer. This is
11 the way history-off messages have always
12 worked, and continue to work today.

13 Q. Have you ever spoken to any of
14 the engineers who coded Vault?

15 A. Yes, we work with the product
16 team.

17 Q. Have you ever asked the Vault
18 engineers, how can we capture the first part
19 of the messages that someone turned history
20 on for?

21 MR. MCCALLUM: Objection,
22 scope.

23 A. No, we haven't had that
24 conversation.

25 * * *

1 have a long-standing chat in your work with a
2 series of co-workers and friends where you
3 share sensitive things such as birth
4 announcements or someone gets a promotion,
5 right?

6 A. Can you show me -- can you
7 actually show me?

8 Q. Absolutely. We're still on the
9 same exhibit, down at the bottom of page 19.
10 The question is at line 20 and your answer
11 begins on line 21.

12 And then I'll show you the one
13 word that goes onto the next page when you're
14 done with that.

15 A. Yes. Yeah.

16 Q. Okay. Have you had an
17 opportunity to review your prior testimony?

18 A. Yes.

19 Q. And does this refresh your
20 recollection that you've had a long-standing
21 group chat with a series of co-workers?

22 A. Yes.

23 Q. And in that group chat, you
24 share sensitive things?

25 A. Yes.

1 Q. And by long-standing, does this
2 mean years?

3 A. Yes.

4 Q. Okay. And just so I'm clear,
5 we talk about chat and there's -- there's
6 Google Chat, which is a program, right?

7 A. Mm-hmm. (Witness nods.)

8 Q. But chats also include
9 Hangouts, correct?

10 A. Hangouts was an earlier
11 application that's since been discontinued.

12 Q. Yes. I meant to say, over this
13 long period of time, Google's chat platforms
14 have sometimes changed names or changed
15 products, right?

16 A. Correct.

17 Q. And so one chat program you're
18 aware of was Google Talk, right?

19 MR. MCCALLUM: Objection,
20 scope.

21 A. Yes, we saw that in some of the
22 prior.

23 BY MR. COLLIER:

24 Q. And Google Hangouts is another?

25 A. Correct.

1 Q. And can you instant message
2 within Google?

3 MR. MCCALLUM: Objection,
4 scope.

5 A. Tell me more about that.

6 BY MR. COLLIER:

7 Q. Well, I'm trying to figure out
8 if instant messaging is a separate program
9 from, say, Google Chats today, or is Google
10 Chats the instant messaging program?

11 A. Google Chats is the instant
12 messaging program, correct.

13 Q. And there is a -- used to be or
14 still is, perhaps, Gtalk?

15 MR. MCCALLUM: Objection,
16 scope.

17 A. I believe Gtalk referred to
18 Hangouts --

19 BY MR. COLLIER:

20 Q. Okay.

21 A. -- at the time.

22 Q. And Dory?

23 MR. MCCALLUM: Objection,
24 beyond the scope.

25 A. Dory is an application that we

1 used to host question and answers in live
2 meetings. So a Dory -- a Dory is a way to
3 submit questions in advance of a meeting,
4 that then the speakers will read from the
5 Dory and then give an answer in the actual
6 Q&A section of a meeting.

7 BY MR. COLLIER:

8 Q. So it's a specialized program?
9 Is Dory -- let me ask it this way: Is -- you
10 can also use Dory during meetings, right?

11 MR. MCCALLUM: Objection,
12 beyond the scope.

13 A. It was only a one-way
14 communication. So it's a way for
15 participants in a meeting to submit questions
16 that they would like answers to from the
17 actual speakers in the meeting.

18 BY MR. COLLIER:

19 Q. Got it.

20 And do you retain Dory
21 questioning?

22 MR. MCCALLUM: Objection,
23 scope.

24 A. I believe, for company-wide
25 meetings, those are retained by the team that

1 And my understanding is that's because of the
2 difference in the way that those two
3 communication types are produced. So
4 individual e-mails will each get produced as
5 a single item. Chats will come as
6 conversations, which can include many, many
7 messages within a single conversation. So
8 that is really kind of an apples-to-oranges
9 kind of comparison.

10 Q. Are you aware that when e-mails
11 are produced, it can often include all of the
12 other e-mails before it, just like what we
13 talked about earlier today when you read it
14 in reverse chronology?

15 A. Yes, as a thread. Yeah.

16 Q. And so e-mail threads are
17 similar to chat conversations, right?

18 A. In a sense.

19 Q. How many more chats would
20 Google have produced in this matter if it had
21 forced location history on in 2019?

22 MR. MCCALLUM: Object to the
23 form.

24 A. And definitely not location
25 history.

1 BY MR. COLLIER:

2 Q. I'm sorry, did I -- I'm going
3 to ask that question again. Thank you.

4 How many more chats would
5 Google have produced in this matter if it had
6 forced history on in 2019?

7 MR. MCCALLUM: Object to the
8 form.

9 A. There's no way of knowing the
10 answer to that.

11 BY MR. COLLIER:

12 Q. How many chats were --
13 discussing Ad Tech tools were not retained
14 because Google had not forced history on?

15 MR. MCCALLUM: Object to the
16 form.

17 A. There's no way of knowing that.

18 BY MR. COLLIER:

19 Q. Does that make you
20 uncomfortable as the information governance
21 lead?

22 A. It doesn't, because I rely on
23 the professionalism and the responsibilities
24 of the individual custodians who receive
25 specific instructions at the moment of their

1 hold being issued on how to use chat or not
2 to use chat when it relates to the topic of a
3 matter. And so that's why I feel confident
4 in their professionalism.

5 Q. Well, you don't have -- first
6 of all, you've never audited whether or not
7 that professionalism actually has people
8 retain relevant chats, have you?

9 MR. MCCALLUM: Object to the
10 form.

11 A. I haven't personally, no.

12 BY MR. COLLIER:

13 Q. Has anyone?

14 A. I don't know if there is a way
15 to do it.

16 Q. How many employees are there at
17 Google?

18 A. Today, there's around about
19 180,000, I believe.

20 Q. How many of those 180,000
21 employees at Google have you had
22 conversations with about making sure they
23 retain chats, if relevant to an ongoing
24 matter?

25 A. I have not personally had any

1 conversations with them. I'm referring to
2 the notice that's issued to all the Google
3 custodians.

4 Q. But there's a difference, as
5 you discussed with Judge Donato, in chats
6 versus e-mail retention, right?

7 A. They are two different
8 applications, so, yes, correct, there is a
9 difference.

10 Q. And to be clear, by default,
11 history is always on for e-mails, right?

12 A. There is no history setting for
13 e-mails.

14 Q. It's treated as if history is
15 always on, though, right?

16 A. They are each retained,
17 correct, according to the retention policy
18 for Gmail.

19 Q. And that's different than for
20 chats, as we've discussed?

21 A. Correct.

22 Q. And an employee has no ability
23 to turn off the retention of e-mails, do
24 they?

25 A. Correct.

1 Q. And Google employees know that
2 the default for their chats is off the
3 record, right?

4 A. The default is actually on, as
5 we just talked about, as of 2023.

6 Q. But even if they were under a
7 litigation hold, employees still had the
8 option to turn history off prior to 2023,
9 didn't they?

10 A. Yes, they had the option on
11 the -- in their discretion, and understanding
12 the instructions they were given as part of
13 the legal hold notice.

14 Q. And you would assume that
15 Google employees knew that off-the-record
16 chats were not retained, right?

17 MR. MCCALLUM: Object to the
18 form.

19 A. I can't speak to the general
20 knowledge of Googlers.

21 BY MR. COLLIER:

22 Q. Let's go back to Exhibit 416,
23 your testimony before Judge Donato.

24 Ask you to go to page 68. Look
25 at lines 11 to 13.

1 A. Mm-hmm.

2 Q. And you were asked: And
3 they -- meaning Google employees -- know that
4 off-the-record chats are not retained, right?

5 And what did you answer?

6 A. I said: I assume so.

7 Q. Is that truthful testimony?

8 A. Yes.

9 Q. Would you agree with me that
10 information in chats could remain potentially
11 useful forever?

12 MR. MCCALLUM: Object to the
13 form.

14 A. I couldn't say if -- I mean,
15 I'd have to look at specific instances to
16 give you that answer.

17 BY MR. COLLIER:

18 Q. Well, as the information
19 governance lead, you'd agree with me that
20 chats can contain potentially relevant
21 information, either for or against Google, in
22 ongoing litigation, right?

23 A. In theory, yes.

24 Q. The change that Google made to
25 force history on in chats in 2023, there was

1 no technological reason that change could not
2 have been made in, say, 2019, is there?

3 A. There was a significant
4 internal effort to enable that force history
5 on.

6 So it was not a trivial matter
7 to make that change. So hundreds of hours,
8 folks across multiple teams, working to bring
9 that capability.

10 So -- and just to be clear,
11 that's -- what we have done is a
12 Google-specific change. So all of the
13 Workspace customers would not be able to do
14 the same thing that it took us hundreds of
15 hours to develop and to deploy.

16 Q. Okay. Those hundreds of hours
17 could have been spent in 2019, right?

18 A. I don't know the answer to
19 that.

20 Q. Well, the changes were made --
21 the changes were made to Google Chats program
22 to switch history to on, right?

23 A. Mm-hmm. (Witness nods.)

24 Q. Those changes could have been
25 made to Google Chats program in 2019, as best

1 you know, right?

2 A. And the reason I can't answer
3 that is because, as we talked about, the
4 product is changing all the time. So I can't
5 say exactly what the product would have
6 required in 2019 to accomplish the same goal
7 that we were able to in 2023. So I just
8 can't -- I'm not an engineer, so I can't
9 answer.

10 Q. Fair enough.
11 So as we sit here today, you
12 don't know of any technological reason that
13 would have prevented history from being
14 turned on in 2019? You just don't know?

15 MR. MCCALLUM: Objection,
16 scope.

17 A. Outside of the massive effort
18 that we undertook internally, correct.

19 BY MR. COLLIER:

20 Q. Well, but that massive effort
21 of hundreds of hours could have been
22 undertaken in 2019, as far as you know,
23 right?

24 A. Again, I don't have -- I don't
25 know what it would have taken in a different

1 time frame, with a version of the product
2 that existed then.

3 Q. You started with Google in
4 2019, right?

5 A. Correct.

6 Q. So, during your tenure at
7 Google, was there any reason that those
8 changes could not have been made prior to
9 2023?

10 A. I don't know the answer to
11 that, because the specific questions we began
12 asking in anticipation of the change had not
13 been discussed prior.

14 Q. And the reason Google started,
15 as you say, asking those specific questions,
16 was because of, in January of 2023, you and
17 others had to go testify about chat
18 retention, right?

19 MR. MCCALLUM: Objection,
20 privileged. The witness can answer
21 the question, but I caution you not to
22 reveal the contents of any privileged
23 communication.

24 A. Yes, it was around that same
25 time, correct.

1 on a litigation hold, correct?

2 A. I don't know the full context
3 of these statements. So I don't know exactly
4 what that means.

5 What -- I mean, blocked on
6 Verizon's response, I don't know how to
7 interpret that. What is blocked, is my
8 question.

9 Q. And you think that has
10 something to do with forcing history on?

11 A. Well, it's not clear to me from
12 this is -- if a request was made, what
13 options were available to the product team at
14 the time.

15 Q. Do you believe that forcing
16 history on was an option available in 2020
17 when this was written?

18 A. I don't believe so. Given that
19 we had specifically investigated and could
20 not do it ourselves.

21 Q. What about for the version we
22 discussed in 2019, on the so-called
23 FINRA-regulated clients?

24 MR. MCCALLUM: Objection, scope
25 and form.

1 A. So I would distinguish the
2 specifics that were in the FINRA example.
3 That was forcing history on for the entire
4 organization, full stop.

5 What we implemented was turning
6 history on for a specific subset of the
7 entire employee population. Only those
8 Googlers on legal hold.

9 So the capability that we saw
10 in the FINRA example is not the same thing as
11 what we ultimately implemented.

12 BY MR. COLLIER:

13 Q. It was actually a broader
14 capability, right? Force it on for everyone?

15 MR. MCCALLUM: Objection,
16 scope.

17 A. No. The forcing on for
18 everyone is the easier option. What we did,
19 and why it took us so many hundreds of hours
20 to do, is because it's very -- it's much more
21 difficult to only have that change apply to a
22 subset of all the employee population.

23 BY MR. COLLIER:

24 Q. So Google could have turned on
25 the history for the entire Google company

1 when you started in 2019, right? Not just
2 users on litigation hold, but the entire
3 company?

4 A. That's right.

5 Q. Okay. You mentioned earlier
6 today that you had reviewed a chat retention
7 policy.

8 A. Yes.

9 Q. How many chat retention
10 policies has Google had?

11 A. We have a single policy that
12 has been updated periodically over time.

13 Q. I asked an imprecise question
14 and you gave me a very precise answer. How
15 many times has the chat retention policy been
16 amended?

17 A. So if you actually look at the
18 history of that, that became a stand-alone
19 policy in 2020. I think we've made around
20 six changes, only one of which was actually
21 substantive. The other ones were just
22 updating because product changes had been
23 made, but there was no actual change to the
24 retention periods involved.

25 Q. Understood. Let's mark as

1 of rooms.

2 So what they, at the time, were
3 calling a flat, nonthreaded room, versus a
4 threaded room. We talked before, threaded
5 rooms were special in that they were history
6 on by default, and you couldn't change that
7 history setting. Flat rooms operated
8 differently, so we wanted to call that out
9 for folks.

10 Q. And most Google Chats are
11 nonthreaded?

12 A. I don't actually know what the
13 distribution is of how folks use the product.

14 Q. What is the reason for the
15 different retention periods for nonthreaded
16 versus threaded rooms?

17 A. It was a product decision.
18 So behind the scenes, via
19 Vault, we have access to some features of
20 some products and not for others.

21 So what you're seeing here is
22 our attempting to harmonize their attention
23 behavior via the tools that we had available
24 to us.

25 Q. So there's no substantive legal

1 reason that you're aware of as to why
2 nonthreaded rooms and threaded rooms have a
3 different retention period or could have;
4 it's based on kind of product design?

5 MR. MCCALLUM: Objection,
6 scope, and I'll caution the witness
7 not to reveal any attorney-client
8 communications.

9 A. Yeah. In this case this was
10 driven by the product team. And this was
11 also an artifact of, you know, stages along
12 the pathway from point A to point B, and the
13 product kind of showing its -- showing its
14 immaturity in some places.

15 BY MR. COLLIER:

16 Q. So the final box talks about
17 previously indefinitely, and then currently
18 18 months.

19 Can you describe that change
20 that was made in November of 2020?

21 A. Yeah. So because the way the
22 Vault rules work, prior to November 18th,
23 there was no Vault retention rule that was
24 operating on Google Chat rooms. So because
25 there was no rule, all messages would be

1 retained indefinitely. The absence of a rule
2 means there is no retention operating.

3 We implemented the change, we
4 implemented the new retention rule in Vault,
5 and starting on this date, Chat messages sent
6 in a threaded room were retained for
7 18 months.

8 Q. And when you say starting on
9 this date, I want you to assume, we'll say
10 October of 2020.

11 There was a new Google Chat
12 threaded room, October of 2020, that that
13 room would still be retained as of this
14 policy's implementation in November of 2020,
15 right?

16 A. Mm-hmm. (Witness nods.)

17 Q. But with this policy
18 implementation, that room would only be
19 retained 17 more months, 18 months from when
20 it was created, right?

21 A. Correct.

22 Q. So that would mean that
23 after -- 18 months after November of 2020,
24 the prior indefinitely saved Google Chats
25 would no longer be available?

1 A. I'm actually not sure the
2 answer to that. Yeah. Because we talked
3 about before, history -- changing the history
4 setting only applies going forward. So I
5 can't, with 100% confidence, answer what
6 would have happened to the previous messages
7 that were sent, and might have been sent
8 before the retention rule was implemented.

9 Q. So on the left-hand side under
10 Previous, there's a box that talks about what
11 happens if message history is off, the
12 default.

13 The next box talks about if
14 message history is on, and then some
15 conditions.

16 But the third just talks about
17 if you're chatting in a new Google Chat room.
18 What is history on or off and how it relates
19 to that third box.

20 A. Yeah. So that's because the
21 third box is talking about threaded rooms,
22 which, like we've talked about before, are
23 history on by default, and you can't -- they
24 do not have a history toggle. So it wouldn't
25 make sense to discuss history changes because

1 they weren't allowed in threaded rooms.

2 There just wasn't a toggle.

3 Q. But under the policy after
4 November 2020, that threaded room would last
5 or be retained 18 months; is that right?

6 A. Messages in that threaded room,
7 correct.

8 Q. What if message history was on?

9 A. Message history was always on.

10 Q. So it's still 18 months?

11 A. Correct.

12 Q. So back to my question about,
13 say, a threaded room conversation from
14 October of 2020. You don't know, as we sit
15 here today, whether or not those messages
16 would be retained after 18 months?

17 A. That's right. Yeah, that's the
18 gap in my knowledge on exactly how that would
19 operate.

20 Q. What effect would it have if --
21 if any, as to whether or not somebody was on
22 a litigation hold, as to the Google Chat
23 threaded room retentions?

24 A. It wouldn't have any effect.
25 Like we talked about, if the hold is in

1 place -- is placed, Vault will preserve
2 anything that is currently on our systems.
3 So that would either apply to indefinite
4 messages, if they were living longer than
5 18 months, and it would apply to any messages
6 that were sent and were still within the
7 18-month period after the retention rule was
8 implemented.

9 Q. So as to the hole in your
10 knowledge we talked about, where you don't
11 know what happened on the scenario of Google
12 Chat threaded rooms that existed prior to
13 November of 2020 and how long they were held,
14 did you send any warning or any policy update
15 to people that it's possible those threaded
16 room chats might not be retained after
17 18 months after November of 2020?

18 MR. MCCALLUM: Objection, scope
19 and form.

20 A. No. This was -- this was the
21 communication. Yeah.

22 BY MR. COLLIER:

23 Q. This meaning you're pointing to
24 Exhibit 431?

25 A. The policy itself, correct.

1 Q. So if we look at the bottom of
2 this page, page 9709520.

3 A. (Witness nods.)

4 Q. I want to ask you about some of
5 the changes that are referenced in here under
6 the heading: What's already changed and what
7 does the roadmap look like?

8 In May of 2020, there was a bug
9 fix that caused some group Chat messages, one
10 or more users on classic Hangouts, to be
11 retained indefinitely.

12 What does that mean? What was
13 fixed and what was the effect?

14 A. Yeah. So that -- as far as I
15 remember, that was an issue that Vault was
16 not operating properly on a subset of chats
17 that had happened in the old tool, so classic
18 Hangouts.

19 So they were living on beyond
20 the expiration of the retention period. I
21 think users noticed, and so we worked with
22 the product team to make sure that they were
23 being retained per the policy.

24 Q. And those that were retained
25 indefinitely, as of May of 2020, that should

1 1:49 p.m. PDT)

2 THE VIDEOGRAPHER: We are going
3 back on record. The time is 1:49.

4 BY MR. COLLIER:

5 Q. [REDACTED], I'm going to hand
6 you what we'll mark as Exhibit 434, and it's
7 going to be H, as in Hector.

8 (Google/[REDACTED] Deposition
9 Exhibit 434, Google Chat Retention
10 Policy, GOOG-AT-MDL-009709506 -
11 GOOG-AT-MDL-009709507, was marked for
12 identification.)

13 BY MR. COLLIER:

14 Q. Is this the chat policy from
15 December 2021 to May of 2023?

16 A. Yes.

17 Q. That was the easiest exhibit
18 all day, because now we'll do the next one,
19 Exhibit 435, tab I as in igloo.

20 (Google/[REDACTED] Deposition
21 Exhibit 435, Google Chat Retention
22 Policy, GOOG-AT-MDL-009709518 -
23 GOOG-AT-MDL-009709519, was marked for
24 identification.)

25 * * *

1 BY MR. COLLIER:

2 Q. And, sir, I'm just asking, is
3 tab I the Google Chat policy from May of 2023
4 to present?

5 And I say the present. I don't
6 know if one's been issued in the last few
7 months. I'm not trying to trick you.

8 A. I don't believe there is a new
9 one.

10 Q. Okay.

11 A. So yes, this is still in
12 effect.

13 Q. And in this current version
14 from May of 2023, if we could look at the
15 first page.

16 Halfway down the first page
17 there's a second note, which I believe is
18 new. And it says: Note: If someone in your
19 conversation is on a legal hold, that
20 conversation's history will typically be set
21 to on automatically, and can't be turned off.

22 Is that a reflection of the
23 February 2023 decision to force on history?

24 A. Yes.

25 Q. And it was only forced on for

1 those on the litigation hold, right?

2 A. Correct.

3 Q. And when it says "typically
4 will be set," what are the exceptions?

5 A. I believe the exceptions here,
6 the reason why it's phrased is typically
7 because we have -- we have different types of
8 holds. So we have public holds and we have
9 private holds. So in a private hold, and
10 that's obviously typically employment or
11 investigation matter, you don't necessarily
12 want to indicate to the subject of the
13 private hold that there is a hold in place,
14 right? They are the subject of, I don't
15 know, could be any -- could be many things.
16 So we wanted to account for the fact that
17 there would be differential behaviors.

18 Q. Does that mean -- I want to
19 make up an employee because I don't want to
20 put any real employee's name, you know, in
21 any even fake trouble.

22 But Mr. John Doe of Google is
23 under some sort of scrutiny by Google or
24 others, and you don't want him to know that
25 he's on a legal hold.

1 Is that the exception that
2 we're talking about here under this note?

3 A. Correct.

4 MR. MCCALLUM: Objection,
5 beyond the scope.

6 A. Right. So we're distinguishing
7 litigation holds, which there is a clear
8 preservation obligation. It will always be
9 set to on automatically, can't be turned off.
10 We're distinguishing that from private holds
11 where there might be instances where the
12 behavior is different.

13 BY MR. COLLIER:

14 Q. What about like a government
15 CID? Can that be a private hold? Is that
16 always a litigation hold?

17 A. I can't speak to the specific
18 distinctions in that space.

19 Q. Okay. Well, thank you. I
20 understand that scenario is an exception to
21 why, typically, does not always.

22 Is there other exceptions?

23 A. Not that I'm aware of.

24 Q. Do you know if any individuals
25 at Google are on a litigation hold for this

1 MR. MCCALLUM: Object to the
2 form.

3 A. Right. So just to be clear,
4 for -- if history is off, 24 hours is the
5 maximum they will be kept, and we don't have
6 access to them at any point.

7 BY MR. COLLIER:

8 Q. Okay. Now, if history is on,
9 can Google search or read the contents of any
10 of those retained chats?

11 A. I believe the answer is not in
12 their native format, but if they are exported
13 to Vault, for example, they might then be in
14 a format that you could actually review.

15 Q. Okay. So there would be no
16 way, in like producing documents for
17 discovery, to, even if history is on, look at
18 the contents of any person not under a
19 litigation hold's chats?

20 MR. MCCALLUM: Objection,
21 scope.

22 A. Right.

23 So in the normal course of
24 business, there is no ability to look into
25 individual chats that might be exchanged.

1 Now, if they've been collected
2 as part of a litigation matter, if they're on
3 legal hold, when they're in that format, then
4 you might be able to review them.

5 BY MR. COLLIER:

6 Q. When they're in the Vault?

7 A. Right. Exactly. When they've
8 been exported by Vault, correct.

9 Q. Can you run Boolean and other
10 searches on chats within the Vault?

11 MR. MCCALLUM: Objection,
12 scope.

13 A. Yes, Vault allows you to do
14 various forms of keyword searching.

15 BY MR. COLLIER:

16 Q. Does Google have the technical
17 ability to create separate organizational
18 units that include legal hold recipients and
19 then change the chat retention setting for
20 that organizational unit?

21 MR. MCCALLUM: Objection,
22 scope.

23 A. So there is a technical
24 capability. However, when we investigated
25 that option, we were told by the technical

1 experts that that was not advised and not
2 permitted within Google policy.

3 BY MR. COLLIER:

4 Q. Right. I'd ask you to look at
5 Exhibit 416, which is your deposition
6 transcript.

7 MR. COLLIER: Well, actually,
8 you don't have to look at that. I can
9 move on.

10 BY MR. COLLIER:

11 Q. When you say you were advised
12 by technical experts that was not advised and
13 not permitted within Google policy, what does
14 that mean?

15 MR. MCCALLUM: Objection,
16 scope.

17 A. Yes. So what we learned when
18 we talked to the Google team that manages our
19 domain, so google.com, is an organizational
20 unit, in Workspace parlance, all -- so all of
21 the companies, a single OU, when we -- when
22 we inquired to the relevant technical
23 experts, what would you say if we wanted to
24 create a separate OU, a new one, just for a
25 subset of Google employees, the answer was,

1 that would be a terrible idea, and we would
2 not support it from an engineering
3 perspective.

4 So that was the answer that we
5 then used to continue to explore other
6 options.

7 BY MR. COLLIER:

8 Q. Why was it a terrible idea?

9 MR. MCCALLUM: Objection,
10 scope.

11 A. So basically, an OU is a kind
12 of a membership bucket. And so you apply
13 policies on the OU basis. And this is for
14 everything from your badge access to your
15 permissions systems; it's many, many things.

16 And their advice was that
17 actively managing those permissions, if
18 someone was being transferred between the
19 existing OU and a new OU, would quickly
20 become unmanageable and potentially introduce
21 risks because it would become so technically
22 complex.

23 BY MR. COLLIER:

24 Q. So your team didn't say you
25 couldn't do it; they just advised against it?

1 A. I mean, we take the advice of
2 our engineering and technical experts when
3 we're making decisions.

4 Q. Did anyone in your department
5 ever audit the chats to make sure nothing
6 relevant to the litigation was being missed?

7 MR. MCCALLUM: Objection,
8 beyond the scope.

9 A. I don't -- I don't know -- tell
10 me what you mean by the word "audit."

11 BY MR. COLLIER:

12 Q. Well, let's go to page 46 of
13 your deposition and see if that helps us.
14 Because I asked you the same question
15 Judge Donato asked you from the bench, so
16 I'll use his meaning.

17 If you look at lines -- well,
18 we'll start with line 5 and I'm going to go
19 all the way to line 17.

20 Just take a look at that, and
21 then I'll ask you some questions.

22 [Document review.]

23 A. Okay.

24 BY MR. COLLIER:

25 Q. All right. And you remember

1 the judge asking you questions, right, at the
2 hearing?

3 A. (Witness nods.)

4 MR. MCCALLUM: Objection,
5 scope.

6 A. That's right.

7 BY MR. COLLIER:

8 Q. So the first question on this
9 page from the Court was: So, basically, you
10 left it up to each individual Google employee
11 to decide about the history?

12 Do you see that question?

13 A. Yes.

14 Q. And your answer was, "Yes."

15 A. That's right.

16 Q. And that's right? At least
17 prior to 2023, correct?

18 A. And along with the instructions
19 that they received as part of the legal hold
20 notice.

21 Q. The instructions given to each
22 individual Google employee, right?

23 A. No, to each individual
24 custodian. The legal hold notice would
25 include instructions on how to use the

1 might be interested in communicating.

2 BY MR. COLLIER:

3 Q. Nor does Google. Right?

4 You can -- Google employees can
5 use Google Chat for business things, right?

6 A. Correct.

7 Q. Birth announcements, which are
8 not a Google business thing, right?

9 A. Correct.

10 Q. Paragraph 29 on page 9.

11 Now, the first sentence here
12 says: Google has the technical ability to
13 set Chat history to, quote, on, as the
14 default for all employees who are subject to
15 a legal hold, but it chooses not to, period.

16 Now, that, I believe you'll
17 say, was true until February of 2023, right?

18 MR. MCCALLUM: Objection to
19 scope.

20 A. That's right.

21 BY MR. COLLIER:

22 Q. Let's go to paragraph 32.

23 The Court found: Google did
24 not check to see if custodians were actually
25 preserving relevant Chats as directed by the

1 hold notice, and did nothing in the way of
2 auditing or monitoring Chat preservation.

3 MR. MCCALLUM: Objection,
4 scope.

5 A. Is there a question?

6 BY MR. COLLIER:

7 Q. There is a question. Under
8 oath, sir, is this finding by the Court true,
9 or not?

10 MR. MCCALLUM: Objection to
11 scope.

12 A. Well, as we've discussed, there
13 is no technical ability to monitor the
14 content of chats to determine relevance in
15 the normal course of business.

16 BY MR. COLLIER:

17 Q. And then the second sentence
18 says: There is no evidence establishing that
19 Google did any individualized follow-up on
20 Chat preservation with the hold recipients,
21 including those designated as custodians.

22 Is that true, sir?

23 MR. MCCALLUM: Objection,
24 scope.

25 A. My thoughts on this are that I

1 do know that there was follow-up with
2 custodians in a general sense to remind them
3 of their obligations, substance of their hold
4 notice. I believe that happens twice a year,
5 so...

6 But I -- but if he is
7 specifically saying if there was a
8 Chat-specific follow-up, then yes, I assume
9 that's correct.

10 MR. COLLIER: Okay. All right.

11 We can set that to the side.

12 Why don't we take a short
13 break. I think I'm going to be able
14 to finish in one more questioning
15 session when we come back.

16 MR. MCCALLUM: Okay.

17 MR. COLLIER: I just want to
18 organize my last few documents to do
19 this efficiently.

20 MR. MCCALLUM: Okay.

21 THE VIDEOGRAPHER: We're going
22 off record. The time is 2:39.

23 (Recess taken, 2:39 p.m. to
24 2:54 p.m. PDT)

25 THE VIDEOGRAPHER: We're going

1 back on the record. The time is 2:54.

2 BY MR. COLLIER:

3 Q. [REDACTED], good afternoon.

4 Did -- does Google use Google
5 Chat with its customers?

6 A. Yes, you could use Google Chat
7 internally and externally.

8 Q. Do you know if people used
9 Google Chat or instant messaging to talk to
10 publishers?

11 A. I don't know.

12 Q. Advertisers?

13 A. I don't know.

14 Q. But it can be used internally
15 and externally, right?

16 A. That's right.

17 Q. To your knowledge, does Google
18 routinely use any non-Google Chat programs?

19 A. Not to my knowledge.

20 Q. And I think I asked you this
21 before, but I'm not sure I asked it exactly
22 this way, so I'm going to ask you a big, long
23 question because I think I know your answer,
24 but if I need to break it up, I will.

25 As we sit here today, are you

C E R T I F I C A T E

I, DEBRA A. DIBBLE, RDR, CRR, CRC,
Notary Public, do hereby certify:

That [REDACTED], the witness
whose deposition is hereinbefore set forth,
was duly sworn by me and that such deposition
is a true record of the testimony given by
such witness;

That pursuant to FRCP Rule 30,
signature of the witness was not requested by
the witness or other party before the
conclusion of the deposition;

I further certify that I am not
related to any of the parties to this action
by blood or marriage, and that I am in no
way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have
hereunto set my hand on 18th day of May,
2024.



Debra A. Dibble TX CSR-10777

Fellow of the Academy of Professional
Reporters

Registered Diplomate Reporter

Certified Realtime Reporter

Notary Public 11/17/2027

ERRATA SHEET FOR THE TRANSCRIPT OF [REDACTED] 30(b)(6)

Case Name: *In re Google Digital Advertising Antitrust Litigation*, 4:20-cv-00957-SDJ

Dep. Date: May 17, 2024

Deponent: [REDACTED]

| Page | Line | Corrections | Reason for Correction |
|---------|--------------|--|-----------------------|
| 18 | 23-24 | The phrase “The policy is managed by technology called Vault” should read “The policy is managed by a technology called Vault” | Transcription error |
| 34 | 7-8 | The phrase “a couple of other letters” should read “a couple other letters” | Transcription error |
| 88 | 15-16 | The phrase “anything like that” should read “anything about that” | Transcription error |
| 99 | 10-17 | Lines 10-17 should be recorded as a question by Mr. Collier, not a response by the deponent. | Transcription error |
| 100 | 1-2 | The phrase “subject in the protective order” should read “subject of the protective order” | Transcription error |
| 108-109 | 108:25-109:2 | The phrase “application that we used to host” should read “application that we use to host” | Transcription error |
| 138 | 4 | The phrase “enable that force history” should read “enable that, to force history” | Transcription error |
| 138 | 12-13 | The phrase “all of the Workspace customers” should read “all other Workspace customers” | Transcription error |
| 163 | 22-23 | The phrase “harmonize their attention behavior” should read “harmonize their retention behavior” | Transcription error |
| 231 | 1 | The phrase “there was follow-up” should read “there is follow-up” | Transcription error |

I have inspected and read my deposition and have listed all changes and corrections above, along with my reasons therefore.

Date: June 14, 2024

Signature: /s/ [REDACTED]